



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 6344-01
19 February 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL OF RECORD [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that the characterization of his discharge be changed.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Adams, reviewed Petitioner's allegations of error and injustice on 12 February 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 18 June 1981 at the age of 18.

d. During the period from 24 March 1982 to 11 May 1983, Petitioner was assigned to a weight control/personal appearance program on four occasions. On three of these occasions, he failed to satisfactorily complete the program due to being overweight.

e. Petitioner served for nearly two years without disciplinary incident. However, on 14 June 1983 he received nonjudicial punishment (NJP) for disrespect, urinating in a passageway, and urinating on personal property. The punishment imposed was a reduction to paygrade E-2, a \$500 forfeiture of pay, restriction for 15 days, and extra duty for five days.

f. On 4 January 1984 Petitioner was again assigned to a weight control/personal appearance program. However, following a medical examination, he was diagnosed as overweight and his condition was found not to be due to a pathological disorder.

g. Subsequently, Petitioner was processed for separation by reason of unsatisfactory performance as evidenced by his failure to conform to weight standards and unsatisfactory completion of three weight control programs.

h. On 17 September 1984 Petitioner was issued a general discharge under honorable conditions by reason of unsatisfactory performance due to failure to conform to weight standards. At the time of his discharge Petitioner's conduct and proficiency averages of 4.0 and 3.9 were sufficiently high to authorize a fully honorable characterization of service.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board notes the nature of Petitioner's misconduct and does not condone his infractions. However, the Board's finding is based on Petitioner's overall satisfactory record of service as evidenced by his conduct and proficiency average.

The Board is aware that attaining such averages does not entitle an individual to an honorable characterization of service when processed for administrative separation for cause. However, the Board can discern no reason to depart from the mark averages in this case, given Petitioner's satisfactory performance and his disciplinary record of only one NJP in over three years of service. Accordingly, the Board concludes that relief in the form of recharacterization of Petitioner's discharge is appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged on 17 September 1984 vice issued the general discharge under honorable conditions on the same day.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

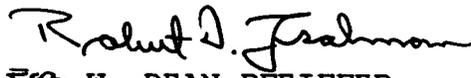
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


For W. DEAN PFEIFFER
Executive Director

